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St. Barnabas Medical Center *and* New Jersey Nurses Union, Local 1091, CWA. Case 22–CA–24632

June 10, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

On October 29, 2002, Administrative Law Judge Joel P. Biblowitz issued the attached decision.* The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions, and to adopt the recommended Order.

The Respondent argues that the rules governing the midterm modification of contracts do not apply here because, "[o]nce the Union urgently requested that wages be reopened and the Medical Center agreed, the Union and Medical Center incurred the same bargaining obligations and rights that they would enjoy or have had no contract been in existence." We find no merit in this argument.

The Board has long held that the proposal of a midterm modification does not impose a bargaining obligation. Nothing in [Section] 8(d) "suggests a party *making* a midterm proposal should be treated differently from a party *receiving* such a proposal. As the recipient of a midterm proposal clearly has no duty to discuss or agree to it, we find the party proposing a midterm modification does not incur a bargaining obligation by tendering its proposal." *Connecticut Light & Power Co*., 271 NLRB 766, 766–767 (1984). Furthermore, absent a wage reopener provision, the parties do not incur traditional bargaining obligations by meeting and discussing proposals for a midterm modification. See *Mack Trucks, Inc*., 294 NLRB 864, 865 (1989); *Herman Bros., Inc*., 273 NLRB 124 fn.1 (1984), enfd. 780 F.2d 1015 (3d Cir. 1985). Thus, by simply requesting that the Respondent meet with the Union to discuss the "feasibility of a wage reopener," the Union did not incur traditional bargaining obligations.[2] Accordingly, we agree with the judge's finding that the Respondent unlawfully implemented wage increases during the term of the contract without the Union's consent.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, St. Barnabas Medical Center, Livingston, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. June 10, 2004

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Robert J. Battista, Chairman

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Peter C. Schaumber, Member

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Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Marguerite Greenfield, Esq., for the General Counsel.
Francis Mastro, Esq. (Apruzzese, McDermott, Mastro & Murphy, Esqs.) for the Respondent.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me in Newark, New Jersey on September 16, 2001.[1] The first amended complaint, which issued on August 22 and was based upon an unfair labor practice charge that was filed on June 11 by New Jersey Nurses Union, Local 1091, CWA (the Union), alleges that St. Barnabas Medical Center (the Respondent), unilaterally increased the wages of the unit employees, a mandatory subject of bargaining, during the term

* The judge inadvertently refers to the events herein as taking place in the year 2002. The correct year, however, is 2001.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] Just as the Union did not incur any additional bargaining obligations, so the Respondent did not reap the bargaining right to make unilateral changes after impasse.

We do not pass on whether the result would be different if, during a contract, both parties clearly agree, in writing, to reopen part or all of the contract.

[1] Unless indicated otherwise, all dates referred to herein relate to the year 2001.

of its collective-bargaining agreement with the Union without the Union's consent, in violation of Section 8(a)(1)(5) of the Act. [2]

FINDINGS OF FACT

I. JURISDICTION

The Respondent admits, and I find, that it has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION STATUS

The Respondent admits, and I find, that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE FACTS

The facts herein are generally undisputed. The Respondent operates a 620-bed acute care hospital in Livingston, New Jersey (the facility), where it employs about 800 registered nurses. In 1998 the Respondent established its cardio thoracic unit pursuant to a Certificate of Need from the State of New Jersey. The Union was certified as the exclusive bargaining representative of the Respondent's registered nurses in 1991 and has represented this unit since that time. The most recent contract between the parties covering the RN unit (the Agreement), was entered into on October 23, 1999 and is effective for the period November 2, 1999 through November 1, 2002. The Agreement recognizes the Union as the collective-bargaining representative for the following unit:

> All full-time and regular part-time registered nurses and graduate nurses, including charge nurses and IV therapists, employed by the Employer at its Livingston, New Jersey facility, but excluding all office clerical employees, graduate practical nurses and licensed practical nurses, infection control employees, utilization review employees, home health care coordinators, in-service instructors, nursing instructors, computer coordinators, nutrition specialists, anesthesiology coordinators, other professional and non-professional employees, other technical employees, service and maintenance employees, engineers, managerial employees, nursing coordinators, temporary employees, guards and supervisors, including head nurses and radiology nurse specialists, as defined in the Act, and all other employees.

Article IX, Wages and Minimums, states, inter alia:

> (a) Effective November 2, 1999, each employee on the payroll of the Employer on that date and covered by this Agreement, shall move to the next level of the wage schedule set forth in Schedule A annexed hereto.
>
> (b) Effective November 2, 2000, each employee on the payroll of the Employer on that date and covered by this Agreement shall move to the next level of the wage schedule set forth in Schedule A annexed hereto.
>
> (c) Effective November 2, 2001, each employee on the payroll of the Employer on that date and covered by the Agreement shall move to the next level of the wage schedule set forth in Schedule A annexed hereto.
>
> . . . .
>
> (e) In the event the Medical Center is unable to effectively recruit for any Cardio Thoracic ("CT") staff nurse, the Medical Center may, after agreement of the Union, place new hires on an accelerated level of the wage scale.
>
> In the event the Union does not agree with the Medical Center, the Medical Center may submit the issue to arbitration under expedited arbitration rules. In the event that an arbitrator rules that the Medical Center is unable to effectively recruit for any CT staff nurse, the Medical Center may place new hires on an accelerated level of the wage scale.[3]

The Agreement does not contain a wage reopener provision.

The record testimony herein is mainly comprised of documentary evidence, principally letters between the Respondent and the Union. Beginning on about January 23, there was a series of letters between Robert Clarke, counsel for the Respondent and Sondra Clark, the executive director of the Union. By letter dated January 23, Clarke requested a meeting with Clark and Sari Kaplon, the Respondent's vice president for patient care services, "regarding the Cardio Thoracic nurses." On the same day, Clark wrote to Clarke stating, inter alia, that the Union:

> Has received no less than a dozen calls from staff nurses inquiring about a "wage re-opener" at St. Barnabas Medical Center.
>
> While I have consistently explained to staff nurses that the parties must agree if a wage re-opener is to take place, at this writing NJNU has received no formal notification from SBMC concerning this possibility.
>
> Please consider this a formal request from NJNU to your client regarding the feasibility of a wage re-opener in the current collective bargaining agreements. The current staffing crisis plus the inability of SBMC to recruit seasoned, qualified staff nurses should make the need for this request quite clear. You should also note, since 1-1-01, NJNU has received fourteen (14) "short staffing complaint forms." If you wish to be furnished with a copy of these reports, the Union will forward them to you upon request.

Clark wrote to Clarke, again, on January 29, stating that their earlier letters crossed in the mail, but that she was prepared to meet with him and Kaplon at their earliest convenience. On February 8, she wrote a similar letter to Clarke and Kaplon expressing her willingness to meet to discuss "the staffing crisis."

By letter dated April 16 to all of the Respondent's employees, Mark Pilla, the Respondent's executive director, stated that the 2001 wage and salary program had been approved and, effective June 1, all eligible employees, including all nonunion

[2] Respondent's unopposed motion to correct the transcript is hereby granted.

[3] There is no evidence that the Respondent ever invoked this procedure.

and nonphysician personnel, would receive a 5-percent increase. This increase was described as a "performance based increase" to be given to those employees who have "continuously met the requirements of their position, have received a satisfactory performance evaluation, and complete their probationary period." The letter states that the increase "is a direct result of the dedication and superior performance of our employees."

By letter dated June 6, Clarke wrote to Elizabeth Orfan, counsel for the Union; this letter was faxed to Orfan early in the morning on June 6:

> Saint Barnabas Medical Center has reviewed your proposal to equally divide among all RN's and LPN's the money generated by the Medical Center's proposal. For the reasons stated during the course of negotiations, Saint Barnabas does not believe this is feasible particularly as it does not address the serious problem Saint Barnabas Medical Center is having recruiting and retaining CTOR and CTICU RN's. This problem has reached a critical stage and must be corrected promptly if the CT Program is to survive. Therefore, we are rejecting your proposal.
>
> As an impasse has been reached on all outstanding issues, please be advised that we will be implementing our last offer in its entirety effective immediately.
>
> Although we were not able to reach agreement we appreciate the Union's effort to resolve this vital issue.

By letter of the same day, Sara Corello, counsel for the Union, responded to Clarke:

> I have just received your letter to Elizabeth Orfan announcing your intention to "immediately" implement SBMC's last offer.
>
> New Jersey Nurses Union had no obligation to bargain over the wages already agreed to in the 1999–2002 collective bargaining agreement with SBMC (the "Agreement"). NLRA Sec. 8(d). Sandra Clark and Karen May made clear that the Union was meeting with you to discuss changes in the negotiated wage increases as a courtesy, but in no way agreed to those changes. Therefore, SBMC has no right to declare impasse and unilaterally implement changes to the negotiated terms of the Agreement currently in effect. See, e.g. *Keystone Consolidated Indus.*, 237 NLRB 763 (1978).
>
> Nevertheless, and without agreeing to any changes to the Agreement, the Union asks that no unilateral changes be made by SBMC at least until the payroll period beginning Sunday, June 10 so that the Union can consider your response to its last suggestion. The Union will respond to your letter of today by Friday at 5 p.m. We trust that you will agree to this modest extension in the hopes of reaching an amicable agreement on this issue.

On June 6, the Union distributed a flyer to the unit employees. It states:

> WAGE UPDATE
>
> SBMC HAS REJECTED NJNU'S LAST WAGE PROPOSAL—WHICH WAS TO TAKE THE COST OF ITS 5 POINT WAGE PACKAGE [$1.75 MILLION DOLLARS] AND DIVIDE THE MONIES EQUALLY BETWEEN *ALL* NURSES AT SBMC. TODAY—JUNE 6, 2001, SBMC HAS DECLARED THAT IMPASSE HAS BEEN REACHED IN THE DIALOG OF WAGES, AND THAT IT INTENDS TO IMPLEMENT ITS 5 POINT WAGE PROPOSAL IN ITS ENTIRETY IMMEDIATELY!!
> 1. CTICU & CTOR NURSES TO RECEIVE A $420/ MONTH STIPEND
> 2. RN'S FROM 5 TO 26 YEARS WOULD RECEIVE A 5% INCREASE [2% + 3% NOV. INCREASE]
> 3. RN'S FROM 0 TO 4 YEARS WOULD RECEIVE A PERCENTAGE INCREASE FROM 5.56% to 7.95%.
> 4. PRECEPTOR PAY INCREASE TO $2.
> 5. LPN WAGE SCALE [AS PER SBMC SCALE] WITH A 5% INCREASE.
>
> NJNU HAS REQUESTED THAT NO UNILATERAL CHANGE BE MADE UNTIL FRIDAY, WHEN WE WILL RESPOND TO SBMC's DECISION.
> NJNU WILL RESPOND TO SBMC'S STRONG ARMED APPROACH TO THIS ISSUE IN WHATEVER MANNER *YOU* DEEM APPROPRIATE.
>
> THE OPTIONS ARE AS FOLLOWS:
>
> *ACCEPT SBMC'S 5 POINT WAGE PROPOSAL* AS DEFINED ABOVE, WHICH DIVIDES NURSES BY SPECIALTY & YEARS OF SERVICE—& WOULD REQUIRE NJNU TO WITHDRAW THE UNFAIR LABOR PRACTICE CHARGE AGAINST SBMC WITH REGARD TO THE LPN CONTRACT.
> *REJECT SBMC'S 5 POINT PROPOSAL*, WHICH WILL RESULT IN THE MONETARY LOSS OF 2% [YOU WILL STILL BE ENTITLED TO NOV. 3% INCREASE], AND NJNU WOULD MOST PROBABLY HAVE TO LITIGATE SBMC'S ACTION TO IMPLEMENT AS IMPASSE CANNOT BE DECLARED DURING THE TERM OF YOUR CONTRACT.
> YOUR DECISION ON THIS MATTER IS CRITICAL.
>
> PLEASE CALL YOUR OFFICERS AND DELEGATES—OR THE NJNU OFFICE WITH YOUR DECISION BY FRIDAY 12 NOON!

By letter dated June 7, Kaplon wrote to the Respondent's "Nursing Professional" employees:

> We would like to take this opportunity to thank you for your hard work and dedication to the Saint Barnabas Medical Center. As you are aware, we at the Medical Center offered our nursing staff a salary increase of no less than 5% as well as several other monetary enhancements to thank our nurses for their extraordinary work as well as to remain competitive in the current environment. Although we are aware that salary is not necessarily the most important factor in making an employee happy we feel it is certainly an integral part of trying to make Saint Barnabas Medical Center an employer of choice

along with improving the environment in which we all must work.

The salary increases which have been given, were not a contractual obligation. The Union contract with the Medical Center calls for a raise for our nursing staff of 3% to take effect November 1, 2001. We have chosen to increase the 3% to 5% and to begin that increase effective immediately.

Your Union has rejected this offer and in effect started a negotiation. We cannot seem to arrive at a resolution with the Union. Our decision at this point, rather than to continue with suggestions which are unaffordable is to give to our nurses that which we could afford and it is included in your current check. These voluntary increases will cost the Medical Center $1.75 million dollars per calendar year. There are four areas in which we have made positive adjustments to salary.

1. Since many nurses commented on the extra work of precepting new staff we have increased preceptor pay from $1.00 to $2.00 per hour.
2. All nurses at the Medical Center are receiving a 5% raise immediately.
3. We have found that we have lost some nurses in the first five steps of the salary scale due to our lack of competitive salary in those areas. For that reason we have increased the first five salary steps more than the 5%. The range in those steps is from 5.5% to 8%.
4. The nurses in our Cardio thoracic Intensive Care Unit and Cardio thoracic operating room will receive a monthly stipend of $420. This stipend along with the 5% increase will make our Cardio thoracic program attractive for these specialty nurses. It is only through the success of programs such as the Heart Hospital of New Jersey will Saint Barnabas continue to flourish as we go forward. This specialty stipend for these nurses only serves to make us competitive in this area. This is the current market salary for these particular positions.

Unfortunately, we were not able to come to clear resolution with the Union and thus have given this increase against the Union's wishes. It is our desire to work with the Union as we go forward. We must maintain the excellent quality of care we provide at the Medical Center while trying to provide the nursing staff with as much reimbursement as is affordable. We must also strive with enhancements in other areas to make the Medical Center the employer of choice for our nursing professionals as well as all of the other employees.

These increases took effect on June 7. By letter dated June 8, Maria Refinski and Eric Polo, the two union cochairs wrote to Clarke stating:

On June 6, 2001, NJNU sent you a request on "holding off" on implementation of your wage proposal. The Hospital has failed to acknowledge or reply to NJNU's letter and instead unilaterally implemented the wage changes.

We demand the Hospital cease and desist and restore wages to the levels in our current binding contractual agreement, pending our membership's determination as to how to proceed.

It is discouraging that what the Union understood as ongoing communication, negotiations, and "working together" with the Hospital has ended with the Hospital taking such actions. SBMC has succeeded in taking a giant step backwards in its relationship with this Union and the Hospital. This Union will take all necessary steps to do what needs to be done to restore the membership's unity.

By letter dated June 12, Clarke responded to Refinski and Polo's letter stating that, for the reasons stated in his June 6 letter to Orfan, the Respondent would not rescind the increases. On June 13, Refinski and Polo wrote to Clarke reiterating their demand that the Respondent "cease and desist its unilateral implementation of disparate wage increases." The letter states that the Union objects to the $420 monthly stipend given to the Thoracic ICU and OR nurses and the 5.56- to 7.95-percent wage increases given to nurses with 0 to 4 years experience, which compresses the negotiated wage scale, but the Union accepts the immediate 5-percent general wage increase to all the RN's and the $1 increase in preceptor pay. By letter dated June 18, Corello wrote to Clarke stating that, "Because there seems to be some confusion on the part of the Hospital's representatives, I want to make it absolutely clear" that the Union agrees with the 5-percent across-the-board increase, as well as the $1-an-hour increase in preceptor pay, but does not agree to the special stipend for the cardio thoracic nurses or the increases in the five-step salary schedule. "Such benefits were made without the Union's consent and in violation of law. NJNU asks that the latter increases be rescinded or it will continue to pursue all legal remedies." By letter dated June 19, Clarke wrote to Corello that there is "absolutely no confusion." He states:

throughout the negotiations the Union consistently rejected the Medical Center's offer in its entirety. At no time did the Union ever indicate that it was willing to agree to some aspects of the Medical Center's offer, but not others.

By letter dated June 21, Corello wrote to Clarke responding to "the inaccuracies in your June 19 letter." She states, inter alia:

First, I am not sure why you cannot accept that the Union's position is that you should continue to pay all nurses a 5% increase and a $1 increase to preceptors, but rescind the $420 monthly stipend to cardio thoracic nurses and rescind the increases above 5% to less experienced nurses. As the Union's legal representative, I am authorized to tell you that this is the Union's position.

I am also informed that your characterization of the Union's position during discussions of possible increases is inaccurate. The Union made clear that its objection to the Hospital's proposal was that it was inequitable. The Union's last proposal at the meeting of May 16, 2001 was to take the entire cost of the Hospital's package and translate it into an equal flat dollar or percentage increase for all nurses. When the Union's proposal was that you *should* give a flat dollar or percentage increase, it is a misrepresentation to state that the Union wants to take away the 5% increase (as some nurse managers have stated). It is also misleading to say that the Union "consistently re-

> jected the Medical Center's offer in its entirety"—the Hospital repeatedly stated that it was proposing an entire package, which could only be accepted in its entirety or rejected. It was the Hospital that consistently refused to modify any aspect of its package, despite the Union's counterproposals and its position that it would agree to any equitable proposal.

There are a number of facts herein that are either undisputed or otherwise clear: the Union never consented to the "package" of raises announced and given by the Respondent on June 7. In addition, it is clear that the Respondent was having difficulty recruiting and maintaining enough qualified nurses for these units—the CT-ICU and the CT-OR—to keep them fully operational.[4] Respondent introduced into evidence a letter dated June 2 that it received from nine of the 10 nurses in the unit tendering their resignations effective July 1.[5]

I refused to allow the Respondent to introduce evidence in two areas that I found were irrelevant to the issue before me. Counsel for the Respondent stated his intention to have Clarke and Kaplon testify about the discussions and negotiations with the Union about the increases in order to establish that impasse existed. Because that would not constitute a defense herein, I did not allow that testimony. *Standard Fittings Co.*, 845 F.2d 1311, 1316 (5th Cir. 1988). Further, Kaplon testified that what differentiates the surgery performed in the Respondent's cardio thoracic unit from other area hospitals (other than Newark Beth Israel, which is affiliated with the Respondent) is that is that the surgery that they perform is known as "beating heart surgery" or "off bypass surgery" where the patient is not connected to a heart/lung machine for the duration of the surgery. Counsel for the Respondent attempted to elicit testimony from Kaplon to establish that this type of surgery is preferable to open-heart surgery performed in other hospitals in the area. I refused to allow this testimony because it is irrelevant to the ultimate determination herein and, in addition, I am in no position to make a determination of the best form of open-heart surgery. Kaplon did testify, however, that about six other hospitals within about a half-hour drive from the Respondent's facility perform open-heart surgery, but not of the "beating heart" type.

IV. ANALYSIS

The crucial fact herein is that during the term of a contract between the Respondent and the Union the Respondent increased the wages of its RN's without the Union's consent. The Respondent defends that it did so because it was having difficulty recruiting and maintaining the staffing of its cardio thoracic ICU and OR units, and that it determined that the only way that it could keep these units properly staffed was by increasing the compensation to the nurses in these units. It did so on June 7 and, at the same time, increased the compensation of all the other RN's at the facility, as well. The law is very clear in this area. In *Standard Fittings Co. v. NLRB*, supra, at 1315, the court stated:

> If the mandatory subject which the employer wishes to change is the subject of a provision in a collective bargaining agreement, the employer commits an unfair labor practice if it changes that condition without the permission of the union. While a contract is in force, Section 8(d) permits the union to refuse, even unreasonably, an employer's proposal to modify the terms established by the collective bargaining agreement. The union thus need not assent to proposed changes in the contract, no matter how necessary to the survival of the enterprise. The result may be harsh, but the law is clear that a party may not escape its obligations under a collective bargaining agreement because of financial difficulties.

In *Oak-Cliff Golman Baking Co.*, 207 NLRB 1063, 1064 (1973), the Board stated:

> We have no doubt that Respondent's description of its motive and its object is a truthful one. But we have here a situation where these considerations are irrelevant. The unambiguous language of Section 8(d) of the Act explicitly: (1) forbade Respondent's midterm modification of the contract's wage provision without the Union's consent; and (2) granted the Union the privilege it exercised to refuse to grant consent. Nowhere in the statutory terms is any authority granted to us to excuse the commission of the proscribed action because of a showing either that such action was compelled by economic need or that it may have served what may appear to us to be a desirable economic objective.

The only difference between the above matters and the instant matter is that the Respondent herein increased the wages of its employees, rather than the usual situation wherein the employer decreased the wages, in the hope that such action would help to keep it in operation. Under the existing law, there is no difference between increasing wages and decreasing wages during the term of a contract without the union's consent. In *Integrated Health Services*, 336 NLRB 575, 579 (2001), the judge stated:

> The good intentions of the Respondent to stay in business and to deliver quality patient care are, however, irrelevant to the issue of whether the Respondent violated the Act when it unilaterally granted the wage increases during the term of the collective-bargaining agreements. The unambiguous language of Section 8(d) explicitly forbids midterm modification of a collective-bargaining agreement's wage provisions without the Union's consent.

The Respondent defends that its actions herein were justified because Clark's January 23 letter to Clarke requested wage-reopening discussions. There is a big difference, however, between a request to reopen wage discussions, especially in the

[4] I refused to allow Respondent to present evidence regarding its difficulty in recruiting employees for these units for two reasons. The record is clear that Respondent was having difficulty in recruiting and maintaining qualified RN's in these units and Clark's January 23 letter to Clarke refers to the Respondent's recruiting difficulties. Further, it is irrelevant to the ultimate determination herein.

[5] The reason for the 29-day difference between the date of the letter and the date that the resignations are effective is that the nurses are obligated to give 4 week's notice in order to be entitled to their accrued vacation and holiday pay. Respondent attempted to introduce further evidence concerning this letter, but I refused to allow such evidence as there was no record evidence to establish that this was anything other than a good-faith notice from the RN's of their intention to resign.

absence of a contract provision allowing it, and the Union consenting to a wage increase during the contractual term.

It is also no defense herein that the Respondent had to increase the wages in the cardio thoracic units in order to maintain the staffing and operation of the units. That is not a valid defense to unilaterally increasing unit employees' wages during a contract term. Counsel for the Respondent, in his opening statement, referred to the situation as an emergency for the Respondent. I disagree. Numerous other hospitals in the area also performed open-heart surgery and while it may not have been the same kind of open-heart surgery that was performed in the Respondent's cardio thoracic unit, the shutdown of these units, while unfortunate, would not have been an emergency for either the Respondent or the community. Respondent employed approximately 800 registered nurses at its facility; at the most, only about 20 were involved in these units. More likely, the loss of these units meant that the Respondent would be denied the prestige of having this surgery performed at its facility. This, however, does not outweigh the restrictions of Section 8(d).

I therefore find that by increasing the wages of its RN's, who were represented by the Union, during the term of the contract, and without the Union's consent, the Respondent violated Section 8(a)(1)(5) of the Act.

CONCLUSIONS OF LAW

1. The Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. The Union has been the exclusive collective-bargaining representative of the following employees of the Respondent in a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time registered nurses and graduate nurses, including charge nurses and IV therapists employed by the Employer at its Livingston, New Jersey facility, but excluding all office clerical employees, graduate practical nurses and licensed practical nurses, infection control employees, utilization review employees, home health care coordinators, in-service instructors, nursing instructors, computer coordinators, nutrition specialists, anesthesiology coordinators, other professional and nonprofessional employees, other technical employees, service and maintenance employees, engineers, managerial employees, nursing coordinators, temporary employees, guards and supervisors, including head nurses and radiology nurse specialists, as defined in the Act and all other employees.

4. The Respondent violated Section 8(a)(1)(5) of the Act when it granted wage increases and other improvements in the terms and conditions of employment to its registered nurses on June 7, 2001 without the consent of the Union.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Respondent must rescind, upon the request of the Union, any of the changes that it made to the wages and other terms and conditions of employment of its registered nurses on June 7, 2001.

On these findings of fact and conclusions of law and based upon the entire record, I issue the following recommended[6]

ORDER

The Respondent, St. Barnabas Medical Center, Livingston, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally and without the Union's consent modifying or changing wages, rates of pay, or any other term and condition of employment set forth in the collective-bargaining agreement during the term of the agreement.

(b) In any like or related manner interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following action designed to effectuate the policies of the Act.

(a) On request of the Union rescind any of the changes in rates of pay or other terms and conditions of employment of its registered nurses unilaterally implemented on June 7, 2001.

(b) Within 14 days after service by the Region, post at its facility in Livingston, New Jersey, copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 7, 2001.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 29, 2002

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT unilaterally and without the consent of New Jersey Nurses Union, Local 1091, CWA (the Union) grant wage increases to you, or otherwise change your rates of pay or other terms and conditions of your employment as set forth in our collective-bargaining agreement with the Union.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request of the Union, rescind any of the changes to your wages or any other term and condition of your employment implemented by us on June 7, 2001 without the Union's consent.

ST. BARNABAS MEDICAL CENTER